IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9071 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI BACHUBHAI KOLI

Versus

DISTRICT MAGISTRATE

Appearance:

MR SUNIL C PATEL for Petitioner

Mr.H.L.Jani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dt.23.8.99 passed by the District Magistrate, Bhavnagar whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985.The petitioner is lodged in the District Jail, Rajkot. The grounds enclosed with the detention order show that 5 cases were registered against the petitioner under the Prohibition

Act during the period 8.8.98 and 10.7.99.The statements of 2 witnesses recorded on 18.8.99 have also been referred to by the detaining authority.The detaining authority has found the petitioner to be a bootlegger and engaged in related anti social activities. It has been mentioned that the other alternatives are not sufficient to deter the petitioner from continuing with his anti social activities and it was necessary to detain him. With regard to the identity of the witnesses, provisions of S.9(2) of the Act has been invoked.

Learned counsel for the petitioner has argued that it is not a case of breach of public order. Leaned A.G.P. has also failed to show as to how a case of breach of public order is made out against the petitioner. As per various decisions of the Supreme Court, it is well settled law that on the basis of the allegations as are made out in this case in the grounds of detention, no case of breach of public order can be said to have been made out, even if all the allegations are taken to be true. In absence of any case of breach of public order, the detention cannot be justified. It is not a case of breach of public order. At the most it can be said to be a case of breach or law and order.

Accordingly the impugned detention order dt.23.8.99 passed by the District Magistrate, Bhavnagar cannot be sustained in the eye of law. The same is hereby quashed and set aside. It is directed that the petitioner shall be released forthwith if not required to be detained under any other detention order or in any other criminal case.This Special Civil Application is allowed. Rule is made absolute.

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